

REMARKS

I. STATUS OF THE CLAIMS

Following entry of Applicant's prior Substitute Response to Office Action and Amendment submitted September 19, 2006, claims 1 – 34 currently are pending in the present application. By this Supplemental Response and Amendment, claim 1 has now been amended in view of the discussions with Examiner Vanaman during the telephonic interview conducted September 25, 2006. Claims 1 – 34 remain pending in this application.

II. INTERVIEW SUMMARY

The undersigned would like to thank Examiner Vanaman for his helpful comments and suggestions during the interview conducted on September 25, 2006.

Pursuant to 37 C.F.R. § 1.133(b), the following description is submitted as a complete written statement of the reasons presented at the interview as warranting favorable action. The following statement is intended to comply with the requirements of MPEP § 713.04 and expressly sets forth: (A) a brief description of the nature any exhibit shown or any demonstration conducted; (B) identification of the claims discussed; (C) identification of specific prior art discussed; (D) identification of the principal proposed amendments of a substantive nature discussed; (E) the general thrust of the principal arguments; and (F) a general indication of any other pertinent matters; and (G) the general results or outcome of the interview, if appropriate.

- (A) No exhibits or models were shown or demonstrations conducted.
- (B) The pending claims were discussed generally, and claims 1 and 10 were discussed in particular.
- (C) The *Swanson* and *Johnson* references were discussed.
- (D) No specific proposed amendments to the claims were discussed.
- (E) The Examiner indicated that with respect to claim 1, the invention of *Johnson* has either seat backs, which serves to define a lateral extent of a nesting area or the rearward facing extents of the seat element (portions 44/46 that face the rear of the cart) would be deemed to define lateral extents of the nesting space. The Examiner and Applicant also discussed the orientation of the seat portions 40 and 46 of *Johnson* in view of the nestable shopping cart body with an integrally formed seat portion disclosed in the present application.

In addition, with respect to claim 10, the Examiner indicated his reading of *Swanson* as "teaching separate baskets wherein one extends in an upper direction from, for example, a lower portion of the frame more than another." In response, Applicant noted the various differences between the nestable shopping cart of claim 10 with the incorporation of an integral body to at least partially define a cart passenger seat and nest space, which is not believed to be shown in *Swanson*. Additionally, it was pointed out that *Swanson* appears to disclose swingable gates 56 and 58 that form the rear end of the upper basket 48, the operation of which further seem to teach away from combining *Swanson* with Johnson to incorporate an integral seat and back portion that define a cart passenger seat as well as a nest space, as taught by claim 10 as presently pending.

- (F) No other pertinent matters were discussed.
- (G) It was disclosed that Applicant likely would submit a supplemental response to the Office Action of April 7, 2006, in view of Examiner Vanaman's comments, and that Examiner Vanaman would consider the rejection in view of the previous response and any supplemental response filed.

III. REJECTIONS

B. CLAIM REJECTIONS UNDER 35 USC § 102(b)

Claims 1 – 7 were rejected under 35 USC § 102(b) or (e) as purportedly being anticipated by *Johnson, et al.* (U.S. Patent No. 6,270,093). It is believed that claims 1 – 17, as presently pending, recite a nestable cart assembly that has not been taught and thus is not anticipated by *Johnson, et al.*

As previously discussed, *Johnson* appears to be directed to a nestable shopping cart for carrying multiple children. In the cart of *Johnson*, the children appear to be seated so as to face inwardly toward each other, sitting parallel to the basket of the cart. *Johnson* does not, however, appear to teach or suggest a nestable shopping cart formed so as to at least partially receive a second nestable shopping cart, wherein the nestable shopping cart includes a body comprising an integral seat portion oriented so as to be facing forwardly and including a back portion, wherein the back portion defines a nest space for receiving at least a portion of the second nestable shopping cart, as provided in claim 1 as currently pending. In contrast, the inwardly facing seats

40 and 42 and backrest 44 and 46 of *Johnson* define side walls of the seat module with the nesting space of *Johnson*, referred to as rear entrance 52, being defined therebetween. *Johnson* further appears to require that both seats are arranged at a substantially low elevation in order to accommodate carts with lower baskets and to maintain a lower center of gravity for the cart, such as when larger children are sitting in the seats and with the seats 40 and 42 being arranged lower than the front overhang portion of the basket so that at least the front portion of the basket of an other cart can slide under the handle 38 and over the seats 40 and 42, rather than being received within the defined nest space of the back portion of an integrally formed seat within the body as disclosed in claims 1 – 7 as presently pending.

Given that *Johnson* fails to teach each and every element of claim 1 as currently pending, it is respectfully submitted that *Johnson* does not anticipate claim 1 or its associated dependent claims 2 – 7 under 35 USC § 102(b) or (e). Accordingly, it is respectfully requested that this rejection be withdrawn.

B. CLAIM REJECTIONS UNDER 35 U.S.C. §103(a)

1. Rejection of Claim 5

Claim 5 is rejected under 35 U.S.C. §103(a) as being obvious over *Johnson*. In view of the amendments to claim 1, from which claim 5 depends, it is believed that this rejection is obviated and should be withdrawn.

2 Rejection of Claims 8-22

Claims 8-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Johnson* in view of U.S. Patent No. 3,052,319 to Swanson (“*Swanson*”). Claims 8 and 9 depend directly or indirectly from claim 1. Claims 11-17 depend directly or indirectly from claim 10. Claims 19-22 depend directly or indirectly from claim 18.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or combination of references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant’s

disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP §2142. It is submitted that for at least the following reasons, the combination of *Johnson* and *Swanson* is insufficient to make a *prima facie* case of obviousness.

a. Claims 8 and 9

The amendments to claim 1 are discussed above. *Johnson* does not teach or suggest each and every element of amended claim 1. In particular, *Johnson* does not teach or suggest a nestable shopping cart formed to at least partially receive a second nestable shopping cart, where the nestable shopping cart includes a body comprising an integral seat portion arranged in an orientation facing forwardly, and a back portion, wherein the back portion defines a nest space for receiving at least a portion of the second nestable shopping cart.

Swanson does not cure the deficiencies of *Johnson*. *Swanson* is directed to a cart and checkout counter assembly designed to facilitate checkout without having to remove the goods from cart. The cart of *Swanson* does not include an integral seat portion and back portion, the back portion defining a nest space for receiving at least a portion of a second nestable shopping cart. Instead, the nesting space of *Swanson* is created by moving or swinging gates 56 and 58 inwardly toward the basket, which gates are not needed in *Johnson*, nor would such a combination be suggested, much less be successful at forming the claimed invention.

Given that neither *Johnson* nor *Swanson*, nor the combination thereof, teaches or suggests all elements of the claimed invention, it is respectfully submitted that the purported combination of *Johnson* and *Swanson* is insufficient to support a rejection of claim 1 or its associated dependent claims 8 and 9 under 35 U.S.C. §103(a). As such, it is requested that this rejection be withdrawn.

b. Claims 10 – 17

As noted in the previously entered supplemental response and amendment (filed September 19, 2006) and as discussed during the interview of September 25, 2006, *Johnson* does not teach a nestable shopping cart including a first basket and a second basket as noted in the Official Action of April 7, 2006. *Swanson* further does not supplement or cure the deficiencies of *Johnson*. For example, although the cart of *Swanson* includes a first basket, *Swanson* does not include a first and second basket coupled to and extending from the frame of the cart, wherein the first basket extends from a greater distance than the second basket coupled to the cart. In

addition, as discussed with the Examiner, there appears to be no motivation or suggestion to try to combine the stacked baskets of *Swanson* with the multiple seat, nestable shopping cart of *Johnson*. As noted above, the nesting space of *Swanson* is created by pivoting or swinging gates 56 and 58 inwardly to open the rear of the basket for receiving a basket of another cart therein. Such a construction appears to teach away from providing a seat integrally formed with the body of the cart for carrying a passenger. There is thus no motivation or suggestion to combine the carts of *Johnson* and *Swanson*, and indeed, it further appears that to combine the teachings of *Swanson* and *Johnson* would require a substantial reconstruction of the carts of *Swanson* and/or *Johnson*, which combination still would not appear to be successful at forming the claimed invention.

Accordingly, given that neither *Johnson* or *Swanson*, or the combination thereof, teaches or suggests all the elements of the invention taught by claims 10 – 17, as currently pending, it is respectfully submitted that the combination of *Johnson* and *Swanson* is insufficient to support a rejection of claim 10 or its associated dependent claims 11 – 17 under 35 USC § 103(a). It therefore is respectfully requested that this rejection be withdrawn.

c. Claims 18-22

As discussed, *Johnson* does not teach or suggest a nestable shopping cart including a first basket and a second basket, as provided in claim 18, as pending. Furthermore, *Johnson* does not teach or suggest a nestable shopping cart including a cart passenger seat that faces the second basket, also as provided in claim 18. *Swanson* does not supplement the deficiencies of *Johnson*. *Swanson* does not teach or suggest a shopping cart including a passenger seat and, in particular, does not teach or suggest a shopping cart including a passenger seat that faces the second basket. Further, the use of the swingable gates 56 and 58 of *Swanson* mounted along the rear of the upper basket of *Swanson* appears to teach away from the use of a seat for receiving a passenger therein.

Given that neither *Johnson* or *Swanson*, nor the combination thereof, teaches or suggests all elements of the claimed invention, it is submitted respectfully that the combination of *Johnson* and *Swanson* is insufficient to support a rejection of claim 18 or its associated dependent claims 19-22 under 35 U.S.C. §103(a). As such, it is requested that this rejection be withdrawn.

IV. CLAIMS 22 – 34

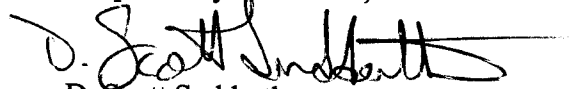
Claims 23 – 34 were presented in the prior Response and Amendment, entered September 19, 2006. Claims 23 – 34 depend either directly or indirectly from amended claims 1, 10, or 18, which were discussed above. New claims 23 – 34 also are believed to be allowable on the basis that none of the cited references teach or suggest the nestable shopping cart presented therein as discussed in the previously entered Response and Amendment.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully submit that claims 1 – 34 as now pending, define a nestable shopping cart that provides a distinct advance in the art that is not taught or suggested by the cited art of record, either alone or in combination. It is therefore asserted that claims 1 – 34 now are in condition for allowance over the cited art of record and an early Notice of Allowance accordingly is solicited. If the Examiner has any further questions regarding the foregoing response, or if there are any issues that remain with the claims that can be resolved through an Examiner's Amendment or clarified in a like manner, a call to the undersigned attorneys is courteously solicited. The Commissioner is hereby authorized to charge any fees due, or credit any overpayment, to Deposit Account No. 09-0528.

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Respectfully submitted,



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